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EXAMINER

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RECORD OF ORAL HEARING  
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*EX PARTE* HENRY E. ARGASINSKI

Appeal 2008-3200  
Application 09/923,645  
Technology Center 2400

Oral Hearing Held: February 12, 2009

Before ALLEN R. MACDONALD, ST. JOHN COURTENAY, III, and  
STEPHEN C. SIU, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANT:

Michael Doerr, Esquire  
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1           The above-entitled matter came on for oral hearing on Thursday,  
2           February 12, 2009, at The U.S. Patent and Trademark Office, 600 Dulany  
3           Street, Alexandria, Virginia, before Victor Lindsay, Notary Public.

4

5           MS. BEAN: Good morning. Calendar No. 46, Mr. Doerr.

6           JUDGE MacDONALD: Have you been here before?

7           MR. DOER: I've been here once before.

8           JUDGE MacDONALD: Okay. Well, you know that you have 20  
9           minutes, and you may begin anytime.

10          MR. DOER: Okay. Good morning, I'm Michael Doerr from Harness,  
11          Dickey & Pearce, and I appreciate the Board's time this morning on the  
12          matter of Mr. Henry Argasinski and his virtual window shopping  
13          application.

14          The issue before the Board today is, I think, straightforward. We're  
15          here on a 102 rejection based on a single reference, the Ferreira publication.  
16          As the Board knows, for the 102 reference to be proper, every element as set  
17          forth in the claims must be shown in the Ferreira publication and arranged as  
18          required by the claim. Mr. Argasinski submits that that has not been done in  
19          this case. The Ferreira publication does not show the specific manner of  
20          navigation that he's claimed in his virtual window shopping application.

21          And specifically, the limitation that I think has been the focus of the  
22          appeal, and the focus of the proceedings this morning, has to do with  
23          scrolling a point of view of a navigable image left or right within an Internet  
24          site by moving the point of view -- and this is very important -- in a direction  
25          along a city block, the city block having adjacent store fronts, along the city

1 block while maintaining the point of view directed toward a group of  
2 adjacent store fronts of the city block.

3 And if I could do a very brief demonstration. If my head or my eyes  
4 is the point of view, you know, the camera from which the user would be  
5 viewing the software that's executing the virtual window shopping method,  
6 if my head is the point of view, what we're talking about here is I'm looking  
7 straight on, and if the three members of the Board were adjacent store fronts  
8 of a city block and the bench were essentially the city block, we're talking  
9 about maintaining my point of view directed towards the Board while I'm  
10 moving the point of view along the city block. And for the record, I'm  
11 moving along or parallel with the Board and where the Board is sitting, with  
12 my head pointed over my right shoulder such that my direction of travel, my  
13 direction of movement of the point of view is parallel with and going along  
14 the city block.

15 JUDGE COURTENAY: Just if I could interrupt you. In your claim -  
16 -

17 MR. DOER: No problem.

18 JUDGE COURTENAY: -- you don't recite parallel with the city  
19 block. And why is not panning a camera along a city street not changing the  
20 point of view of the camera? Why would that not meet your claim?

21 MR. DOER: Well, the manner that is described, the panning that's  
22 described in Ferreira is panning from a fixed point of view. What Ferreira  
23 describes is the point of view is stationary and then --

24 JUDGE COURTENAY: Yes, but you do not recite a fixed point of  
25 view in your claim. You recite "moving said point of view."

1 MR. DOER: That's correct.

2 JUDGE COURTENAY: Yes.

3 JUDGE MacDONALD: Now, where is that, the language you just  
4 cited?

5 JUDGE COURTENAY: I'm looking at Independent Claim 21.

6 JUDGE MacDONALD: I'm looking for the moving.

7 MR. DOER: The --

8 JUDGE MacDONALD: Okay.

9 MR. DOER: I'm sorry. In Claim 21, the -- as you correctly note, it  
10 recites allowing a user to scroll a point of view left or right while in a  
11 direction along the city block while maintaining the point of view direct  
12 toward the adjacent store fronts. What Ferreira talks -- it's talking about the  
13 other type of navigation, which is from a fixed point of view.

14 So Ferreira is talking about -- we're here in a fixed point of view, and  
15 he talks about using 360-degree-type cameras, you know, from that fixed  
16 point of view, and then you can rotate your head around or up or down or  
17 wherever. Once you want to go to a different point of view, he says you can  
18 click on a horizon and then the point of view changes to that other horizon.  
19 So we have fixed point of view, rotation around that fixed point of view, and  
20 then if you want to go over here, you click over here and then it shows you  
21 another 360 degree angle. But nowhere does he show the type of navigation  
22 where you're maintaining your point of view directed toward the adjacent  
23 store fronts while you're moving your point of view along the store fronts.

24 JUDGE MacDONALD: Yeah, well, the directed part I don't -- I see  
25 that in the reference, so I'm a little confused by what you're saying there.

1 Clearly, in the specification, you're keeping it directed at a 90 degree angle  
2 towards the store front.

3 MR. DOER: That's correct.

4 JUDGE MacDONALD: And certainly with rotation, it's directed  
5 towards the store front, but at other angles. So I don't see that directed  
6 towards the store front is really a -- unless you're telling us that that language  
7 requires a 90 degree angle.

8 MR. DOER: Well, it's the directed towards the store fronts while  
9 you're moving it along. So it's the combination of those two that I'm saying  
10 has to be --

11 JUDGE MacDONALD: Well, but each of those parts has a meaning.

12 MR. DOER: Sure.

13 JUDGE MacDONALD: And the second portion of it, I'm a little lost  
14 as to why the reference is not directed towards the store front.

15 MR. DOER: Well, I would say that in Ferreira, from his fixed point  
16 of view, his point of view could be directed towards the store fronts.

17 JUDGE MacDONALD: But your --

18 MR. DOER: But he doesn't allow you to, at the same time, then  
19 maintain it directed towards store fronts and then move it along.

20 JUDGE MacDONALD: Okay. So we're really talking about what  
21 does moving mean, not what --

22 MR. DOER: I would say it's the combination of the two.

23 JUDGE MacDONALD: Yeah, but --

24 MR. DOER: They maintain it directed towards while you're moving  
25 along, but essentially, I think you're correct in that the part that Ferreira

1 doesn't show is the moving it along the adjacent store fronts of city blocks  
2 while it's maintained towards the direction of --

3 JUDGE COURTENAY: But again, that goes back to my question. If  
4 you pan a camera, a stationary camera, along a city block, you're moving the  
5 camera, the camera's point of view along the city block. It may not be  
6 perpendicular, but still, I think it would meet the language of your claim.  
7 We have to do the broadest reasonable interpretation --

8 MR. DOER: Sure.

9 JUDGE COURTENAY: -- of your claim language.

10 MR. DOER: Sure. I would disagree for the reason that --

11 JUDGE COURTENAY: You're asking us to do a more narrow  
12 interpretation of what you claimed.

13 MR. DOER: Well, I would disagree for the reason that that type of  
14 panning is -- you have to think about where the point of view is, and the  
15 point of view essentially being the point from where you're viewing the  
16 subject matter. And in a panning from a fixed point of view, it's simply your  
17 point of view is staying here. You're moving the viewing window from that  
18 point of view

19 to, you know, rotate it around, but you're still not moving the point of view  
20 along the store fronts.

21 JUDGE COURTENAY: Yes, but you could pan the camera from the  
22 first store that's closest to you and you can pan it down the street to the store  
23 that is farthest away.

24 MR. DOER: And I would submit --

25 JUDGE COURTENAY: Why would that not meet your claim?

1 MR. DOER: Because, I would submit, that your point of view has  
2 stayed the same. Your point of view has stayed exactly where you started at,  
3 that one fixed point.

4 JUDGE COURTENAY: So you're equating the point of view --

5 MR. DOER: You've rotated around that fixed point of view.

6 JUDGE COURTENAY: You're equating the point of view in your  
7 camera with -- in your claim, rather, with the camera being -- moving,  
8 actually.

9 MR. DOER: Yes.

10 JUDGE COURTENAY: And you're saying in the reference, the  
11 camera's point of view is stationary?

12 MR. DOER: That's exactly right. That's exactly right.

13 JUDGE COURTENAY: But your claim doesn't recite moving the  
14 camera.

15 MR. DOER: It says moving the point of view.

16 JUDGE COURTENAY: Moving the point of view.

17 MR. DOER: That's correct.

18 JUDGE COURTENAY: And they're not quite the same, are they?

19 MR. DOER: I think they are in this case, because your point of view -  
20 -

21 JUDGE MacDONALD: Is there a definition on the specification of  
22 point of view that requires what you're saying? Because what I'm hearing  
23 you say is this claim has a very particular limited meaning which precludes  
24 the reference.

25 MR. DOER: I think that's true.

1 JUDGE MacDONALD: So my concern is, what language in here is  
2 the language we can look back in the specification and go, oh, okay, point of  
3 view is this and that precludes the reference?

4 MR. DOER: Well, let me pull out the specification. There's a couple  
5 of spots that support --

6 JUDGE MacDONALD: I'm looking from the perspective that a  
7 person of ordinary skill in this art --

8 MR. DOER: Right.

9 JUDGE MacDONALD: -- reading the specification would  
10 understand --

11 MR. DOER: Right.

12 JUDGE MacDONALD: -- not that it could be that, but it is required  
13 to be that.

14 MR. DOER: I would direct the Board to two spots in particular. One  
15 is a paragraph that was added to the specification via an amendment with  
16 language that came directly from the provisional application. It's now  
17 numbered paragraph 15.1. It talks about virtual window shopping, always  
18 characteristic of a city or town streetscape. Going to the second sentence,  
19 "Store front may be represented through three-dimensional photographs or  
20 graphically and stitched together to form a city block or section of a  
21 shopping mall or plaza. This representation would have the ability to move  
22 the point of view from left to right or reverse to give the viewer an  
23 impression of walking down a street or strolling through a mall. Actual  
24 store windows -- window displays would be visible in the view, which

1 would represent the actual display as found in the physical store front and  
2 may be updated as necessary."

3 JUDGE COURTENAY: Can you point to the support for that in your  
4 provisional application that you have? You did a 131 affidavit to swear  
5 behind the utility patent.

6 MR. DOER: Yeah, it's in the provisional application at -- I believe  
7 that was attached to the appeal brief. It's on --

8 JUDGE COURTENAY: It appears to be the first page, the fourth  
9 paragraph.

10 MR. DOER: The first page, virtual window shopping, and then it  
11 would be the one, two, three -- the fourth full paragraph. And the second  
12 sentence in particular describes the moving the point of view left to right or  
13 reverse to give the viewer an impression of walking down the street or  
14 strolling through the mall. Now, I think that's important because we're  
15 talking about moving the point of view from left to the right, and we have to  
16 give the viewer the impression of walking down the street or strolling  
17 through the mall. And I submit the only way you can do that is by actually  
18 moving the point of view along the city block or along the adjacent store  
19 fronts. If you're giving the impression of walking down, you have to be  
20 walking this way, essentially with your point of view -- if your head is the  
21 camera, your point of view over your right shoulder, your head pointed over  
22 your right shoulder towards the city block or the adjacent store fronts as  
23 you're moving in a direction along the city block.

24 The other portion I would point the Board to is Figure 2 -- I believe  
25 it's Figure 2 -- of our application, where there's -- it shows the store fronts,

1 so you have three store fronts there shown, and then it gives you the  
2 navigation buttons at the bottom, go left one block, go right one block,  
3 which would take you along that city block. You know, if you pressed the  
4 button for going right one block, it takes you, moves you along the city  
5 block while your point of view is directed towards those store fronts, and  
6 your point of view is moved along the store fronts.

7 JUDGE COURTENAY: Okay. In your brief, on page 8, you say that  
8 your 131 affidavit, your provisional application, basically antedates any of  
9 the subject matter of the utility patent. What is it, Ferreira?

10 MR. DOER: Yeah, I've been pronouncing it Ferreira, but I'm not  
11 sure.

12 JUDGE COURTENAY: Okay. So what parts of the reference are not  
13 supported in the provisional reference?

14 MR. DOER: I would say that there's -- that the main aspect that was  
15 added in the utility application, Ferreira, that was not in the provisional had  
16 to do with zooming in and then rotating the view after you've zoomed in.  
17 That was not in the provisional application of Ferreira, this counter  
18 clockwise rotation movement. I would say for purposes of today, I don't  
19 believe either the publication of Ferreira or the provisional application  
20 teaches what we're claiming.

21 JUDGE COURTENAY: Okay. Do you have a copy of the  
22 provisional application with you?

23 MR. DOER: Of Ferreira?

24 JUDGE COURTENAY: Yes.

25 MR. DOER: I do.

1 JUDGE COURTENAY: Okay, I'm looking at page 5, and the second  
2 paragraph. And it discloses that Web surfers will be able to use their mouse  
3 or the arrows on their keyboard to move the camera around. And they go on  
4 to say that you can pan left, you can pan right, pan up, pan down, or any  
5 combination, and also zoom in and out.

6 MR. DOER: Correct.

7 JUDGE COURTENAY: Okay, so --

8 MR. DOER: The zooming is there, and I'm sorry if I misunderstood  
9 your question. The zooming is there in the provisional. It's the zooming in  
10 and then counter clockwise rotation of the image which was later described  
11 in the --

12 JUDGE COURTENAY: Yes, but we can pan left, can't we, in the  
13 provisional? It's right there in the paragraph that we can pan left.

14 MR. DOER: You can pan left from your fixed point of view, but I  
15 don't think you can rotate counter clockwise and manipulate the image after  
16 zooming.

17 JUDGE COURTENAY: Okay. When they disclose moving the  
18 camera around, you interpret that as a single pivot point for the camera,  
19 basically? The camera is stationary and you can pan the camera?

20 MR. DOER: That's correct. And I believe that's what they describe in  
21 here, in Ferreira, because they talk about using their 360 degree cameras  
22 where they come to a location and they take pictures all around with their  
23 360 degree camera, and then they allow a user to basically look and pan all  
24 around, up and down, et cetera, from that fixed point.

1 JUDGE MacDONALD: So am I understanding correctly the 131 is  
2 only directed to certain dependent claims, the subject matter of certain  
3 dependent claims? Because the item that you've mentioned is missing from  
4 the provisional reference is not in Claim 21.

5 MR. DOER: That's correct.

6 JUDGE MacDONALD: Okay.

7 MR. DOER: I don't believe the provisional or the publication teaches  
8 the references that are on appeal.

9 JUDGE MacDONALD: Which is the other. But to get to -- so the  
10 swearing behind is only with respect to certain claims?

11 MR. DOER: I would say the swearing behind was for purposes of the  
12 new matter, including the zooming and the counter clockwise.

13 JUDGE MacDONALD: Right. Right.

14 MR. DOER: I don't know that it is even directly relevant to  
15 dependent claims, but it was for that purpose of predating the added subject  
16 matter.

17 JUDGE COURTENAY: Okay, again, can you explain one more time  
18 why panning a camera is not changing the point of view?

19 JUDGE MacDONALD: Well, can I ask a question --

20 JUDGE COURTENAY: Yes.

21 JUDGE MacDONALD: -- on point to that which I'm still struggling  
22 with, is exactly what is the definition of point of view? Because I'm looking  
23 at the added language and I'm not seeing a definition there. And to me, it's  
24 critical because is point of view limited to how I'm looking at something, or  
25 is it the image I see is part of the point of view? And I'm not seeing a

1 definition here or elsewhere in the specification that precludes the reference.  
2 So is that an understood term in the art that has a specific meaning? What's  
3 the --

4 MR. DOER: I would say it's -- the point of view -- and if you read our  
5 reference, and even the Ferreira reference, the point of view is generally  
6 referred to as the point from which you are viewing. So the point where the  
7 camera is located or the point from which the viewing is done. Now, I  
8 submit that that's different than the viewing window, which is what you're  
9 seeing out, what the point of view is pointed at.

10 JUDGE MacDONALD: Well, my point being if I'm at a fixed point  
11 looking west, that's a point of view.

12 MR. DOER: Correct.

13 JUDGE MacDONALD: If I look east from the same point, is that a  
14 different point of view or is that the same point of view?

15 MR. DOER: I would say you're at the same point of view because  
16 you're standing at that same point. The point from which you're viewing has  
17 not changed. What has changed is your viewing window in that you've  
18 rotated at that fixed point to a different --

19 JUDGE MacDONALD: And that's the definition I'm looking for  
20 here. Okay, would an artisan understand that those are the same point of  
21 view? Then I would think to a layman, they would look -- sounds like  
22 different points of view, but if the technology, as you have defined it, is that  
23 those are the same point of view, then it makes a difference. But I'm not  
24 seeing that definition here.

1 JUDGE COURTENAY: Your claim recites “moving said point of  
2 view of said navigable image.” [claim 21] So you're changing the point of  
3 view of the image, not necessarily moving the camera. There's nothing in  
4 your claim that limits the movement of the camera in any way.

5 MR. DOER: Let me get out the claim.

6 JUDGE COURTENAY: There's not a camera in your claim.

7 MR. DOER: If I can go back to Judge MacDonald's question, too, I  
8 think that 15.1 paragraph that we talked about, which talks about moving the  
9 point of view and left or right along store fronts, I would submit that's the  
10 part of the specification that would lead one to that definition of point of  
11 view.

12 Now going to 21 -- now going to Judge Courtenay's question, 21, we  
13 have allowing a user to scroll a point of view of the navigable image left or  
14 right by moving the point of view of the navigable image in a direction  
15 along. 22, we have -- in Claim 22, we have scrolling a point of view left or -  
16 - of the navigable image left or right by moving the point of view of the  
17 navigable image in a direction along the city block. And then 23, scrolling  
18 images, navigating the navigable image in a left or right manner to move the  
19 point of view of the navigable image in a direction along actual store front  
20 store window displays.

21 So I submit that those are -- it does say moving -- scrolling the point  
22 of view of the navigable image, but the point of view is -- in relation to the  
23 navigable image, the point of view is the spot from which you are viewing  
24 the navigable image, and that's the thing that's being moved along the store

1 fronts, along the adjacent -- or along the city block while it's directed  
2 towards those store fronts.

3 JUDGE COURTENAY: I understand your position, but you're asking  
4 us to read that into the claim, as I see it.

5 MR. DOER: I would submit that it's there via the combination of  
6 moving the point of view along the city block while maintaining the point of  
7 view directed toward the city block. The combination of those two, I'm  
8 submitting, can only be done in one way, which is moving the point of view  
9 along and maintaining this direction like I've demonstrated. A fixed point of  
10 view with panning, you're going to have your point of view stay right there.  
11 You're not moving the point of view.

12 JUDGE COURTENAY: But you can pan along the city block as you  
13 pan the camera.

14 MR. DOER: But you would not be moving the point of view. The  
15 point of view would stay fixed while you're rotating along the store fronts.

16 JUDGE COURTENAY: Okay, but the point of view of the image  
17 would change as you pan, would it not? And that's what your claim recites,  
18 "moving said point of view of said navigable image." [claim 21].

19 MR. DOER: I would say the viewing window of the store fronts  
20 would change, but not the point from which you were viewing.

21 JUDGE COURTENAY: Okay. Well, I think you've made your  
22 points clear.

23 MR. DOER: Okay. Thank you very much.

24 JUDGE MacDONALD: I think you have on that point. Do you have  
25 any other ones that you wanted to raise with us?

1           MR. DOER: I think that covers it. I thank the panel for your time this  
2 morning. Are there any other questions, I should ask?

3           JUDGE COURTENAY: No.

4           MR. DOER: Okay. Thank you very much.

5           (Whereupon, the proceedings concluded on February 12, 2009.)